JOEL BROIDA, LLOYD KNOWLES, STEPHEN MESKIN, AND JO ANN STOLLEY Appellants	:	BEFORE THE HOWARD COUNTY
vs.	:	BOARD OF APPEALS
HOWARD COUNTY PLANNING BOARD, WCI MID-ATLANTIC US REGION, INC., and RENAISSANCE CENTRO COLUMBIA, LLC Appellees	:	HEARING EXAMINER BA Case No. 559-D

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DECISION AND ORDER

On May 1, May 22, and June 12, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the appeal of Joel Broida, Lloyd Knowles, Stephen Meskin, and Jo Ann Stolley (the "Appellants"). The Appellants are appealing a decision of the Howard County Planning Board (the "Board") dated January 18, 2006, approving the site development plan for a proposed 22-story retail and apartment building to be located in Columbia Town Center (SDP-05-90).

The Appellants certified that notice of the hearing was advertised and that adjoining property owners were notified as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

E. Alexander Adams, Esquire, represented the Appellants. Richard B. Talkin, Esquire, S. Scott Morrison, Esquire, and Nicole Lynn Kobrine, Esquire, represented Renaissance Centro Columbia, LLC ("Renaissance"), the owner of the subject property.[1]

[1] Mr. Talkin also represented WCI Mid-Atlantic U.S. Region, Inc., the sole managing member of Renaissance. On motion of the Appellants, I dismissed WCI from the appeal on the grounds that Renaissance, and not WCI, possesses the ownership interest in the property.

At the outset of the hearing, Renaissance moved for dismissal of the case. Upon consideration of Renaissance's motion and the testimony and oral arguments presented, and for the reasons stated below, I have determined to grant the motion and dismiss the appeal.

Background

Renaissance proposes to develop a 22-story retail and apartment building on a 1.46 acre, NT (New Town) zoned parcel of land lot situated on the northeast corner of the intersection of Little Patuxent Parkway and Wincopin Circle in Columbia (the "Property"). The proposed development would include 160 apartment units, 10,697 square feet of retail space, a four level parking garage, and associated site improvements.

In order to erect the building, Renaissance is required by the Zoning Regulations to first submit a site development plan that comports with the overall Final Development Plan ("FDP") for the New Town District. Prior to 2002, the Property was designated on the FDP as "Employment Center Land Use – Commercial," which designation did not permit residential uses. On January 23, 2002, the Board approved an amendment to the FDP which added apartments as a permitted land use for the Property.

Renaissance submitted to the Department of Planning and Zoning ("DPZ") a site development plan (designated SDP-05-90) for the project. On December 21, 2005 and January 18, 2006, and pursuant to Section 125.E of the Zoning Regulations, the Howard County Planning Board held public meetings to consider the SDP. On January 18, 2006, the Board issued a letter informing the owner that the SDP was approved with certain modifications.

The Appellants are residents of Columbia who are opposed to the proposed development. On February 14, 2006, the Appellants filed an administrative appeal petition in which they allege, among other things, that (1) the Board's 2002 approval of the Amended FDP permitting apartments on the Property was an *ultra vires* exercise of zoning authority, which can only be performed by the Zoning Board, rendering the Board's present approval of the SDP void, (2) the Board erroneously concluded that it did not have authority to limit the height of the proposed building, and (3) the SDP fails to adequately account for parking, open space access, fire safety, and traffic.

Appellee's Motions

Renaissance has filed two motions to dismiss the case and one motion *in limine*.[2] The motions to dismiss allege that (1) the appeal is defective because the Appellants failed to sign the affirmation contained on the appeal petition form, and (2) the Appellants lack standing to pursue the appeal because they are not specially aggrieved.

I. Failure to Sign Petition.

With respect to the first motion, Renaissance points out that administrative appeal petition form on which the Appellants presented their appeal was signed by the Appellant's counsel but not by the Appellants themselves. The form requires the appellant and attorney to affirm that the statements and information contained in or filed with the petition are true and correct. The Appellant's counsel filled in the names of the Appellants and initialed it. Renaissance alleges that the failure to comply with the appeal form violates Section 3.1 of

[2] Because I will dismiss the case based upon the second motion to dismiss, I need not discuss the motion *in limine*.

the Hearing Examiner Rules of Procedure and Section 2.202(a) of the Board of Appeals Rules of Procedure, and that these violations are cause for dismissal.

Section 3.1 of the Hearing Examiner Rules of Procedure states that petitions must be filed in the manner prescribed by Section 2.202(a) of the Board's Rules. Section 2.202(a) provides that, among other things, the Board of Appeals shall prescribe the form and content of the petition, the petitioner shall ensure the accuracy and completeness of the information required on the petition, and DPZ may require corrections to the petition or additional information.

In my view, the Appellants have substantially complied with Section 2.202(a). Nothing in this section explicitly requires the appellant to sign the petition form. While it requires the petitioner to "ensure the accuracy and completeness of the information required on the petition," it does not state when or how this assurance is to be made. Certainly, signing the petition form personally is one method of fulfilling this requirement. In this case, the Appellants employed another method – the Appellant's attorney signed the form on their behalf. An attorney often acts as an agent of his client; indeed, in court, the attorney, and not the client, signs pleadings.

Moreover, administrative proceedings are intended to be less formal mechanisms for resolving grievances. The petition form is merely a device to provide fair notice of the claim and grounds on which it rests, so as to give the opposing party adequate opportunity to prepare a defense. Davis, *Administrative Law Treatise*, 2d Ed., Section 14:11 (1980); Stein, Mitchell, Mezines, *Administrative Law,* Section 33.03[3] (1991). "Mere irregularities in an application to a board for a permit not amounting to a jurisdictional defect do not affect the validity of the permit. A substantial compliance with the requirements of an administrative

regulation in making an application for a permit is sufficient." *Beall v. Montgomery County Council*, 240 Md. 77, 89 (Md. 1965), quoting *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 299, 49 A.2d 799 (1946).[3]

In this case, Renaissance was on fair notice as to the identity of the Appellants and the alleged facts and grounds upon which the Appellants' claims were based. What's more, during the course of the hearing, the Appellants submitted affidavits authorizing their attorney to sign the petition form on their behalf (see Appellants Exhibit 1). The Board's Rules of Procedure permit an appellant to so amend its petition at any time. See Section 2.202(b). Consequently, based upon these facts, I find that the Appellants have substantially complied with Section 2.202(a). The Appellee's motion is denied.

II. Standing.

Renaissance's second motion to dismiss alleges that each of the Appellants lacks standing to pursue the appeal. The standard for standing to appeal a decision of the Planning Board is expressly set out in Section 16.900(j)(2)(iii) of the Howard County Code. This section provides that a person taking an appeal must be both (a) "specially aggrieved" by the decision of the Planning Board, and (b) a "party to the proceedings before it."

The phrase "specially aggrieved," when used in an ordinance relating to administrative appeals, has a well-recognized meaning in Maryland that has been spelled out in a line of cases. *Sugarloaf Citizens' Ass'n v. Department of Env't*, 344 Md. 271, 288 (1996). The preeminent case in this line is *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137, 230 A.2d 289 (1967). The Court of Appeals stated:

[3] In *Beall*, only one of several owners of a property proposed for rezoning signed the petition form. The Court of Appeals found that providing the signatures of all the owners was not a jurisdictional requirement and the appellants were not prejudiced by the failure to provide them.

> "Generally speaking, … a person 'aggrieved' … is one whose personal or property rights are adversely affected by the decision …. The decision must not only affect a matter in which the protestant has a specific interest or property right, but his interest therein must be such that he is personally and specifically affected in a way different from that suffered by the public generally." 230 A2d at 294.

Generally, the appellant must provide proof of aggrievement by showing that the impact of the decision on his property is different from the impact upon the general public. It is sufficient if the facts constituting aggrievement appear in the petition for appeal either by express allegation or by necessary implication.[4] An exception to this rule applies if the appellant is an adjoining, confronting, or nearby property owner. In this case, the appellant is deemed, *primae facie*, to be specially damaged and therefore a person aggrieved. *Bryniarsky*, 230 A.2d at 294. In other words, an appellant is presumed to be aggrieved if he merely shows that he owns property "nearby." What is "nearby" depends on the circumstances of the case, but it has been held that one who "owns any property located within sight or sound of the subject property is aggrieved." *Maryland-National Capital Park and Planning Commission v. Rockville*, 269 Md. 240, 305 A.2d 122, 127 (1973). Intervening topography or roadways, however, may support a finding that a complainant is not aggrieved. *DuBay v. Crane*, 240 Md. 180, 213 A.2d 487 (1965).

The presumption of standing for adjoining, confronting, or nearby property owners may be rebutted, however, by the opposing party. If the opposing party presents evidence that the appellant is not in fact aggrieved, the burden shifts back to the appellant to present facts to show that he is specially aggrieved by the decision. *Bryniarsky*, 230 A.2d at 294.

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[4] An appellant need not prevail on the merits to have standing. For example, a person who appeals the grant of a waiver petition may be able to show that the waiver will specially impact his property; he may lose the appeal, however, if the waiver was not arbitrary, capricious or contrary to law. See *Sugarloaf Citizens Association v. Department of Environment*, 344 Md. 271, 686 A.2d 605, 617 (1996).

In the course of the hearing, both Renaissance and the Appellants presented evidence concerning the standing of each of the four Appellants. I shall review and analyze the pertinent evidence separately:

A. Jo Ann Stolley

Renaissance contends that Mrs. Stolley dos not have standing to appeal because she did not participate in the public meetings on SDP-05-90 before the Planning Board. The Appellants argue that, because Mrs. Stolley was listed as an opposition party on two motions filed by the Appellant with the Board on January 18, 2006, she is deemed to have participated.

Section 16.900 of the Code establishes that the Planning Board conducts two types of "proceedings" – public hearings and public meetings. Under both types of proceedings, the public is allowed to participate by presenting information to the Board for its consideration. Sections 1.105 and 1.106.D, Planning Board Rules of Procedure. In this type of case, pursuant to Section 125.E.1 of the Zoning Regulations, the Board holds public "meetings" at which information may only be presented in open session. Section 1.106.C.3, Planning Board Rules of Procedure. In order to present information, the Rules specify that individuals must attend or, at least, be signed up at the meeting. Section 1.106.C.5. Unlike public "hearings," there is no provision allowing the Board to hold the record open beyond the public meeting to receive additional information. Neither is there a provision allowing an individual to later identify herself as a party by letter or other correspondence. In fact, this method of becoming a party to a proceeding of the Board is expressly limited to quasi-judicial public hearings. Section 1.102.D.2.c.

It is undisputed that Mrs. Stolley did not testify or sign up at either of the public meetings. The fact that her name was included in a motion that was apparently presented after the final public meeting is of no moment. Mrs. Stolley must have either testified or been signed up as a party at one of the public meetings, which she was not. Consequently, because a person must be both specially aggrieved and a party to the Board's proceeding, she lacks standing to pursue this appeal.

B. Lloyd Knowles.

Renaissance argues that Mr. Knowles lacks standing because he does not live within sight or sound of the Property and is not otherwise specially aggrieved by the Board's decision. The Appellants did not offer evidence to refute these assertions; rather, they rely on *Hikmat v. Howard County*, 148 Md. App. 502, 813 A.2d 306 (2002) to argue that, because the petition alleges an arbitrary, capricious or illegal act by a government entity, Mr. Knowles (and each of the Appellants) has standing to appeal.

The evidence is undisputed that Mr. Knowles lives 1.8 miles to the west of the Property. Interposed between the Knowles residence and the Property are four major roads and numerous and large residential and commercial developments, including the 1.4 million square foot Columbia Mall. The unrefuted testimony of Carl Gutschick, a professional engineer, established that the proposed building could not be seen from the Knowles property. Clearly, Mr. Knowles' property is within neither sight nor sound of the Property.

The Appellants offered no relevant evidence that Mr. Knowles is otherwise specially aggrieved by the proposed development. Although he testified that he is a former member of the County Council and Planning Board, a long-time resident of Columbia and frequent patron of downtown restaurants and businesses, these facts alone do not distinguish his

personal interests or property rights from those of the general public; in other words, his rights and interests are not personally and specifically affected in a way different from that suffered by the public. Consequently, Mr. Knowles is not "specially aggrieved" as defined in the *Byrniarsky* line of cases.

The Appellants contend, however, that the *Bryniarsky* standard does not apply in this case; rather, they urge that I apply the lower threshold for standing set forth in the *Hikmat* case. My examination of that case's holding indicates, however, that it represents a narrow and unrelated exception to the general "aggrievement" rule. Hikmat involved an appeal by Howard County of a Board of Appeals decision reversing DPZ's denial of a waiver request. The court first noted that governmental entities like Howard County generally cannot be "specially aggrieved" in the *Bryniarsky* sense. Based upon a series of cases arising from mandamus or certiorari actions, however, the court found that "the facts necessary to satisfy the aggrieved requirement, *when the petitioner is a governmental entity*, appear to be that it have an interest in interpreting, administering, and enforcing the laws in question in a given case." 148 Md. App. at 520 (italics added). The *Hikmat* court decided to extend this exceptional standard for aggrievement to cases arising under a petition for judicial review. Nonetheless, the standard clearly applies only to governmental entities, and not to private individuals or parties. Consequently, I find that *Hikmat* is inapposite.

Because Mr. Knowles is not specially aggrieved by the Board's decision, he does not have standing to pursue this appeal.

C. Stephen Meskin.

Renaissance argues that Mr. Meskin lacks standing because he does not live within sight or sound of the Property and is not otherwise specially aggrieved by the Board's

decision. The Appellants counter that Mr. Meskin will be able to see the Property from his residence in the winter and therefore is presumptively aggrieved.

Mr. Meskin lives at 5626 Vantage Point Road - about 1,400 feet from the Property. His residence is separated from the Property by a densely wooded area with trees in excess of 50 feet tall, several parking lots, a hotel and office buildings. Mr. Gutschick testified that the proposed apartment building could not be seen over the existing trees. The wooded area is about 400 feet deep at the Meskin residence (see Exhibit 8). Mr. Meskin testified that he believes he will be able to see the proposed building through the trees; Mr. Gutschick stated that Mr. Meskin's view in the winter will be much obscured.

I find that Mr. Meskin does not live sufficiently nearby the Property to be deemed presumptively aggrieved. As stated above, what constitutes "nearby" depends upon the circumstances of the case. In this case, the Meskin residence is more than ¼ mile from the Property. Such a distance in itself has been sufficient to deny presumptive aggrievement status. See, e.g., *Committee for Responsible Development on 25th Street v. Mayor and City Council of Baltimore*, 137 Md. App. 60, 767 A.2d 906 (2001); *DuBay v. Crane*, supra.

Moreover, in this case the intervening wooded area provides a dense buffer, if not a complete screen, to Mr. Meskin's view of the Property. While he may be able to see the proposed building from his house in the winter, his view will undoubtedly be greatly obfuscated by the dense vegetation. While visibility is one of the elements of proximity, "of itself, however, where, as here, the visibility is only across a broad beltway, and there is no probative evidence of any other specific interest or damage to the use or value of the protestant's property, mere visibility is not enough to give the requisite standing." *Wilkinson v. Atkinson*, 242 Md. 231, 235 (Md. 1966).

In this case, the Appellants have not provided sufficient evidence that Mr. Meskin will be specifically harmed by the proposed development. He testified only that he will see the building on his frequent walks along the lake near the Property and that the building will generate increased traffic on Little Patuxent Parkway. These effects are not specific to Mr. Meskin, however, but are inconveniences to be shared by the public generally. Consequently, the Appellants have failed to provide sufficient evidence that Mr. Meskin is specially aggrieved by the Board's decision in this case.

D. Joel Broida.

Renaissance argues that, although Mr. Broida lives across the street from the Property, he lacks standing because the record indicates that he is not specially aggrieved by the Board's decision. The Appellants contend that Mr. Broida is specially aggrieved because the proposed building will peculiarly block his view and sunlight, increase noise, increase traffic, reduce parking, and reduce the value of his residence.

Mr. Broida lives in the "Lakeside" condominium development located directly across the street to the east side of the Property. His residence is indubitably within "sight and sound" of the proposed development. Renaissance does not contest, however, that Mr. Broida lives within sufficient proximity to the Property to qualify for the presumption of special aggrievement. Nonetheless, I find that Renaissance presented sufficient evidence to rebut the presumption by showing that Mr. Broida is not specially aggrieved. The Appellants failed to meet their countervailing burden.

With respect to traffic and parking, Mr. Broida asserted that the proposed development will exacerbate an already hazardous situation. He claims that traffic is heavy now on Little Patuxent Parkway and Wincopin Circle, and that parking in the town center is

hard to find on weekends. He asserted, without supporting evidence, that the proposed building does not provide sufficient parking. Much of the testimony presented by the Appellants on this point amounted only to unsupported opinions and general conclusions that the development will cause traffic and parking problems. Maryland courts instruct that the unsupported conclusions or fears of witnesses to the effect that a proposed use of property will or will not result in harm amount to nothing more than vague and general expressions of opinion which are lacking in probative value. *Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974). Because the Appellants' testimony in this case was unsupported by any evidence that the anticipated harmful effects are likely to occur, I must afford it little weight.

Contrary to Mr. Broida's assertions, the record indicates that both the proposed building and the Lakeside condominium building provide ample parking for all residents in parking garages within the respective buildings. The plans for the project provide 58 additional parking spaces off-site for patrons of the retail space, and Mr. Gutschick provided a parking analysis that shows that the area will have more than the required parking spaces for all uses (Appellee's Exhibit 16). The residents' entrance to the building will be from Little Patuxent Parkway, diverting this traffic away from Mr. Broida's property. Road improvements and a traffic light are proposed along Wincopin Circle. In short, the preponderance of evidence presented suggests that the proposed development will have minimal adverse impact on traffic and parking for residents of the area.

What's more, the Appellants' expressed concerns about traffic and parking would not affect Mr. Broida differently from the public generally. Consequently, he is not specially aggrieved because of reduced parking or increased traffic.

With respect to noise, Mr. Broida again speculated that the proposed project will create additional noise that will affect him personally. The Appellants provided no basis or support for this assertion. Renaissance, however, presented evidence that deliveries and trash collection will take place within the proposed building, limiting the amount of noise they generate. As previously stated, residents will access the building from the west side, away from the Lakeside building. Indeed, the building itself will act as a noise barrier to traffic on Little Patuxent Parkway, potentially improving the noise conditions for Mr. Broida. Again, the preponderance of the evidence indicates Mr. Broida will not be specially damaged by the project with respect to noise.

Mr. Broida also asserts that the proposed building will block the pleasant view he currently enjoys from his living room and bedroom and will reduce the amount of sunlight coming through his windows in the late afternoons. There is little dispute that the erection of the proposed building will have this effect, and that the impact is peculiar to Mr. Broida and his neighbors on the west side of the Lakeside condominium. The mere loss of view and sunlight is not enough, however, to establish aggrievement. My reading of the Maryland cases indicates that the Appellants must additionally show some economic impact resulting from the adverse condition – namely, a diminution of the value of the appellant's property. See e.g., *Committee for Responsible Development on 25th Street v. Mayor and City Council of Baltimore*, 137 Md. App. at 87 ("He presented no evidence that the pharmacy and its parking lot would cause his property to devaluate"); *DuBay v. Crane*, 213 A.2d at 490 ("And, which is more important, none of the appellants were able to show that the value of their respective property would be adversely affected"); *Wilkinson v. Atkinson*, 242 Md. at 234 ("There was no specific testimony as to any adverse effect upon the value of the Siegel

home."). In *Toomey v. Gomeringer*, 235 Md. 456, 460 (1964), the Court found protestants to have standing where they presented evidence "that the value of their residential properties would be depreciated by the proposed reclassification …. There was in addition testimony by an experienced real estate broker and developer that, in his opinion, the reclassification of the property in question, at least if followed by the development and use of the property as planned by the applicants' contract purchaser, would eat into the existing residential community and would depreciate and depress the area."

No such testimony or evidence was presented by the Appellants in this case. In fact, the record indicates that Mr. Broida had no reasonable expectation of preserving his view or light when he originally purchased his condominium unit in 2005. At that time, having been previously aware of two separate proposals to build high-rise building on or near the Property, he (twice) signed a purchase contract containing a provision in which he agreed that his right to a view was not guaranteed and that there may be improvements built on adjacent properties that might interfere with his present vista. Cleary, at the time of his purchase, the view from his unit was not a significant part of the value that Mr. Broida ascribed to his property. It is unlikely, therefore, that he can claim a diminution of value as result of the loss of that view.

Moreover, Renaissance provided ample contravening evidence that the proposed development would not devalue the nearby residences. Ronald Lipman, a real estate appraiser and consultant, testified that the building would present a slender and attractive design that would be well separated (170 feet) from the Broida unit (see Appellee's Exhibit 9). The look and use of the development would be compatible to Lakeside and the other developments in the area. Most importantly, the proposed residential units will be larger and

more expensive than the adjacent Lakeside units, which fact tends to cause the less expensive units to appreciate in value. Thus, Mr. Lipman offered, the proposed development could actually have a positive effect on Mr. Broida's property value.

Consequently, the preponderance of the evidence indicates that Mr. Broida will not be specially damaged by the project with respect to view or light.

Because the Appellants have not shown that Mr. Broida is specially aggrieved by the Board's decision, he does not have standing to pursue this appeal.

Accordingly, I will grant the Appellee's motion and dismiss the appeal.

ORDER

For the foregoing reasons, it is this **27th day of July 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of appeal of Joel Broida, Lloyd Knowles, Stephen Meskin, and Jo Ann Stolley in BA Case No. 559-D is hereby **DISMISSED**.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

_____
Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.